1945 **K** **File No.** B. Electricity (Surcharge)

Legal 45 Dept

B **BRANCH**

Subject:— A Bill to validate (surcharge) (levied) or purported to be levied under the authority of G.N. P.W.D. No 6041/30 dtd 11-3-43 etc.

(Bom. Act XIII of 1945

(P 25/E)

B Electricity (Surcharge)

File No. 45

Gen. 194'e.

336 A

-1- Office of the R.L.A.

The genesis of the order regarding the levy of a surcharge on the supply of ele-ctricity issued in Government Notification, Public Works Department No. 6091/36 dated the 11th March 1943 is as follows:-

(a) On 8th July 1942 the Nipani Electricity Co. wrote to the Public Works Department requesting to be allowed to charge a fuel oil surcharge on their current tarriff. The Public Works Department consulted the Electrical Engineer on the request of the Co. The Electrical Engineer suggested two methods of achieving the object viz. by adding a clause regarding the proposed surcharge to the licenses of the Cos. after following the procedure laid down in rule 24 of the Indian Electricity Rules 1937 or by issuing an order under the defence of India Rules if it was legally feasible. The P.W.D. who in his opinion No. 8359 dated the 15th October 1942 advised that the Provincial Government had power under rule 81(2)(b) of the defence of India Rules to make an order relaxing the maxima rates of electricity prescribed in the licenses and that such an order would have effect notwithstanding the provisions of the Indian Electricity Act by virtue of section 3 of the Defence of Indian Act. He further pointed out that an order under the said rule would be a general one appl ing to all companies and such an order did not appear to be necessary in the case of all the electric companies for the maintenance of the supply of electricity as justification for the surcharge would differ with different companies. The R.L.A. was therefore of the opinion that an order under the Defence of India Rules would hardly be proper or appropriate particularly because the Indian Electricity Act already provided a remedy for amendment of licenses.

(b) Thereupon the P.W.D. stated that what they

wanted was to introduce a surcharge applicable to all companies on account of rise in the cost of diesel oil apart from other considerations. (Page 13 of P.W.D. File No.6041/36 of 1942-43 may be seen). They therefore asked the Electrical Engineer to suggest in consultation with the "Committee to advise Government on details arising from the control of the supply of electricity due to the rationing of diesel oil" a suitable clause for general adoption. The Electrical Engineer in consultation with the Committee suggested a draft of an order which the P.W.D referred to the R.L.A. The R.L.A. supplied a revised draft to relax the current maxima rates of charges for the supply of electrical energy by meter under the licenses with his opinion No. 985 dated the 9th February 1943.

(c) Thereupon the Deputy Secretary P.W.D. raised the question why a surcharge should not also be levied on bulk supplies. Therefore the Secretary P.W.D. requested the Electrical Engineer to explain why no extra charge should be made on bulk supply contracts, otherwise it seemed possible that small consumers would be victimised.

(d) Meanwhile on the 25-1-1943 the Association of Electrical Undertakings waited on A(R) and raised the question of surcharge in relation to special contracts, see page 13 of P.W.D. File 6290/36. The R.L.A. advised in his No 997 dated the 9th February 1943 that a separate order or orders would be necessary in relation to special contract according as Government wished to consider the position of the Cos. collectively or individually. (page 21 do) The case was sent on 26th February 1943 to the Electrical Engineer for consideration as a linked case along with the main case. (see page 25 .. do.....).

(e) In consideration with the main case and the linked case, the Electrical Engineer suggested in consultation with the Committee revised draft order covering all the cases and the papers were referred to the R.L.A. to vet the draf

(f) Accordingly a revised draft order settled in consultation with the Electrical Engineer was sent with R.L.A.'s No. 1589 dated the 3rd March 1943.

(g) This draft order supplied by the R.L.A. was put by the Electrical Engineer before the Committee who agreed with the same. Accordingly it was issued in Government Notification P.W.D. No. 6041/36 dated the 11th March 1943

2. Having issued the order in the general form on the 11th March 1943 Government went on to supplement it by a letter in the mature of executive instructions to all licensees, evidently trying to persuade the licensees to levy as low a surcharge as possible. The latter is at page 117 of P.W.D. File 6041/36 of 1942-43 and may be see

3. The Administrator of the Nadiad Municipality filed a suit bn the District Court of Kaira against the Nadiad Electricity Co. for the refund of the monies surcharged in respect of the supply of electricity under the said Government order referred to in para. I above. The Company had entered into a special contract with the Municipality on 12th August 1940 for the supply of electricity to the Municipality at the rate of Rs. 0-3-2 per unit for a period of 20 years. The Court held that clause 2(a) of the said Order was ult-r-a vi-res and therefore the Company had no authority to commit a breach of the contract with the Municipality by levying a surcharge. The grounds urged by the District Judge for holding the said Order to be ultra vires appear in his judgement, which is attached as Appendix A.

4. During the course of the above suit the Electric Co. requested Government to join as a party (page 29 ante); R.L.A. advised on page 36 ante that it was for the Court todecide whether Government should or should not be party. The court in its judgement held that Governmen was not a necessary party.

5. After the District Judge's judgement, R.L.A. was consulted as to further action and R.L.A. advised at page 127 ante that the Electric Co. might be requested to file an appeal in the High Court.

6. At A(R)'s request the R.L.A. carefully considered the District Judge's judgement and in his opinion No. 8661 dated the 8th December 1944 explained the legal position as he saw it. A copy of the opinion is attached as APPENDIX B.

7, The Government of India have been advised that the District Judge's judgement is correct. The reasons for the view taken by the Government of India have been called for.

8. As the case is of great importance involving as it does a large amount of a surcharge levied by many other electric Cos. Government desire to join in the appeal in the High Court although it was not a party to the suit in the District Court. The Advocate General is therefore requested to give his opinion on the District Judge's judgement and also say if Government should join in the appeal and contest it.

9. The next question for consideration is what can be done to remedy the position if the appeal in the High Court eventually fails. The District Judge's judgement has attacked only clause 2(a) of the said Order viz. the levy of a surcharge on the supply of electricity under a special contract and this created complications where electricity is taken under special contracts only. It may be noted that subsequent to the date of the said Order the Govt. of Bombay has issued the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944 dated the 16th June 1944 herein after referred to as the revised order. In view of the revised order, (particularly clause 7 and provisoes to clause 5) no other provision will be necessary for the future levy of the surcharge even in cases of special contracts. It will only be necessary to validate the levy of surchatge in the case of such special contracts from 1-4-1943 to the date permitted under clause 7 of the

revised Order. Legislation it appears will be necessaty because no order under the Defence of India Rules can be given retrospective effect. Perhaps such legislation will b competent to the Province under entries 31 and 10 in the Concurrent List though it will be necessary to reserve the proposed legislation for the consideration of the Governor General under section 107(2) of the Government of India Act, 1935 and paragraph (2) of the Proclamation.

10. The Advocate General is therefore requested to advise on the best way to regularise the position as regards the su-rcharge levied by various Electric Cos. under the said Government Order of 11th March 1943 and if legislation is inescapable to advise also the lines on which it may be enacted and whether it would be competent for the Province to enact the same.

In view of the urgency of the matter the Advocate General is requested to favour Government with his views at a very early date.

Sd/. P.N.M.

Remembrancer of Legal Affairs,

U.R. to Advo cate General No. 378 Confl dated the 14th Dec. 1944.

VGP. 17-7-56.

Appendix B. Office of the R.L.A.

The legal position appears to me to be as follows:-

(1) Where an order states on the face of it that it is made in exercise of a specific enabling provision, it is unnecessary for it to express further that the condition precedent to the exercise of the power (such as antecedent satisfaction as to the purpose intended to be served by the order) is complied with. The burden of proving male fides of an order is on the person who impeaches it (A.E.R. 1 K.B. 207 2 C.A. 677; 2 Ch. D 646. These cases have been recently considered by the Bombay High Court in Criminal Revision No. 257/44). The District Judge has not considered these cases and has therefore erred in throwing the burden on Government to show that the order is bona fide.

(2) It is not competent for a court to canvass the adequecy or propriety of the reasons which led to the issue of the order unless ~~male~~ malafides appear. This position is conceded in the D.J.'s judgement.

(3) An order made under rule 81(2) need not necessarily be individual but may be general if Government thinks a general order is expedient or necessary. This is plain from the concluding lines of rule 81(2) (appearing at the end of clause (f) of sub-rule (2)). The fact that the order is general would show that Government considered the increase in cost due to diesel oil etc. so universally pressing that a rise in electricity charges was considered justified in all cases, rather than that Government did not apply its mind to the need or expediency of making an order generally.

(4). An order made to provide for controlling prices need not itself fix the prices; it is enough if it provides the mahinery for price fixation. In other words the order may delegate the power of price fixation to one or more specified persons and may indicate limits if any upon the power so delegated. It has been held after a through exa mination of

all authorities by the Bombay High Court in Haveliram Shetti vs. Morvi (Appeal No.28 of 1943) "that the contention that there can be no delegation or devolution of legislative powers is unsound." This is also the practice of the Govt. of India. Thus clause 10(b) of the Cotton Cloth and Yarn (Control) Order 1943, made by the Government of India under rule 81(2) delegates the power of fixing prices to the Textile Commissioner; clause 6 of the Sugar and Sugar Products (Control) Order 1943, made likewise by the Government of India under rules 81(2) delegates the power of fixing prices to the Sugar Controller. The D.J. is therefore wrong in holding that an order under Rule 81(2) must fix prices expressly and cannot delegate the power of fixing price to others in this particular case to the licensees.

(5) The order in question provides for fixing and levying a surcharge within 33⅓ per cent. of the special contract price. Such fixation and levy amount to fixing a fresh price in place of the contract price. In other words it is "controlling price" within rule 81(2)(b). It is puerile to argue that prices can be controlled only when they fluctuate but not when they are fixed.

(6) The special contract made by the Nadiad Municipality with the electricity company in this case must be in writing as required by proviso (b) of section 49(1) of the Bombay Municipal Boroughs Act, 1925. In the absence of a written instrument embodying the terms of the contract section 49(3) of the Borough Act would render the agreement unenforceable. The special contract in question is therefore clearly an "instrument having effect by virtue of an enactment" within the meaning of section 3 of the Defence of India Act. The D.J.'s view to the contrary proceeds from a failure to consider section 49 of the Boroughs Act. On the correct legal view the order in question would have effect notwithstanding anything contained in the special contract and to that extent it would vary the special contract. Even on the contrary view that statutory order raising electricity prices cannot vary a

a special contract, it would at any rate override the special contract (as conceded in the D.J.'s judgement). In other words the municipality which is the other party to the contract can either avoid the contract when the price is raised or in the alternative continue to benefit under the contract and pay the enhanced price for the electricity. In this case the municipality continued to take electricity after the Co. raised the price under the statutory order and so is bound to pay the higher price.

(7) There is I think some substance in the D.J.'s view that the words "it will shall be competent for the licensee to levy a surcharge....." enable the licensee to fix prices but do not compel him to do so and without compulsion in the order the licensee is not free to affect special contracts. This criticism would be avoided if the wording were "the licensee shall levy such surcharge as he may fix.....". It can however be plausibly argued that this subtle difference in drafting is a legalistic quibble; and so long as the delegate fixing the surcharge is the licensee himself who is actually to levy it, the discretion vested in the delegate to levy the surcharge is neither more nor less than discretion given to him qua delegate to fix the surcharge coupled with an obligation on him qua licensee to levy it in fact.

2. The case is of great importance and the Government of India have been advised that the D.J.'s judgement is correct. The Government of India have not stated what precisely forms the infirmity in the order. If Government joins in the appeal proceedings the Advocate General will no doubt have to appear. I therefore think it is very necessary that the Advocate General should be consulted on the whole case at this stage. The D.J.'s judgement creates complication where electricity is taken under special contracts but does not effect cases where electricity is supplied otherwise than on special contracts.

Sd/ P.N.Moos.

Remembrancer of Legal Affairs. 7.10.

U. R. to P. W. D. No. 8661 dated the

8th December 1944.

No. 25 of 1944.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay 28th December 1944.

U.R. to the Advocate General of Bombay
No. 378 Confidential, dated the
14th December 1944.

Nadiad Borough Municipality
Vs
Nadiad Electric Supply Co., Ltd.

OPINION.

I am asked to advise whether it is worthwhile appealing against the judgement of the District Judge of Kaira in the suit brought by the Nadiad Borough Municipality against the Nadiad Electric Supply Co., Ltd. There are several propositions in the judgement of the Learned District Judge which cannot be supported in law e.g. the proposition that an order made under a rule is exfacie not a good order if it does not on the face of it recite the grounds on which Government thought it fit to make the order and the propositition that if the subject matter in respect of which a rule is made is specifically mentioned in any of the 35 heads specified in Subsection 2 of Section 2 of the Defence of India Act. the power to make rules in respect of such subjects is limited to what is specifically mentioned in such Sub-clause. Both these propositions are now finally rejected by our Appeal Court in two or three recent judgements. It is not necessary to deal with those points in the judgement in detail here as I am of opinion that assuming that all those points are decided in favour of the Electric Co., the Municipality is entitled to succeed on one ground which creates the real difficulty in the way of the Electric Co. This difficulty lies in the question whether the order of 11th March 1943 made under Rul 81(2)(b) entitled the Nadiad Electric Supply Co., to recover from the Nadiad Borough Municipality any

any amount in excess of that provided in the special contra ct. It is clear that Clause 1 of the order by which the maximum rates were relaxed does not judtify the recovery of a surcharge in excess of the rates stipulated in the special contract. The justification must exist if at all in Sub-clause (a) of Clause 2 of the order which pyupports to make it competent to the licensee to levy a surchrge not exceeding 33⅓ per cent on the amount chargeable under s apeical con-tract. It is sought to rely on Section 3 of the Defence of India Act for this purpose. In the argument before the learned District Judge it was contended that the enactment in question would be the Electricity Act. It is now sought to be contended that the order should have effect in super session of the ~~of the~~ special contract on the ground that the special contract is an instrument having effect by virtue of the Bombay Municipal Boroughs Act, 1925 or the Indian Contract Act. After anxious consideration I am of opinion that this contention is unsound. Sections 49(1) and (3) of the Bombay Municipal Boroughs Act are sought to be relied upon. They provide that unless the contract is in writing as required by proviso (b) of Section 49(1) the agreement would be unenforcible. But I fail to see anything inconsistent in the order with the said provisions in the Bombay Municipal Boroughs Act. The order does not purport to make effective a contract which is not in writing or which does not comply with the formalities required by Section 49(1) of the Municipal Boroughs Act. It is equally difficulty to see how the contract Act can be pressed into service for this purpose. The special contract between the parties cannot in my opinion be said to be an instrument having effect by virtue of the contract Act. The Contract Act codifies the law as to how contracts may be made when an agreement becomes a contract what contracts are void or voidable and provides for the performance and discharge of contracts and for the consequence of a breach of contract. By the words

"any instrument having effect by virtue of any enactment other than this Act" occuring in Section 3 of the Defence of India Act, what is meant is for instance a rule or a bye-law made under an Act, which rule or bye-law would not have legal authority but for the provisions of some Act under which it is framed or issued. Even giving a wide meaning to the word---- "instrument" I am of opinion that the special contract is not an instrument having effect by virtue of some other enactment It will be noticed that in several notifications and orders made under the Defence of India rules express provision is made where questions arise as regards existing contracts or contracts entered into before the date of the order or notification. The order in question in this case merely permits the licensee to surcharge an amount not exceeding 33⅓ per cent of the rate fixed by the special contract. I am of opinion that this clause in the order does not override the consumers right to continue to obtain from the licensee supply of energy at the rate fixed in the contract, and does not entitled the licensee to refuse to supply energy to the consumer except on the term of being allowed to add a surcharge to the stipulated rate.

The next question to consider is whether it is competent to the Provincial Government to legalise the recovery and/or retention of surcharges made under the impugned order. I am of opinion that the object can be achieved by a Governor's Act, validating the recovery and/or retention of such surcharge

It is not for me to express any opinion on the policy of enacting a validating measure in this case or whether such validation should be by an act or ordinance of the Central Government or by acts of the respective Provincial Governments concerned. If a validating act is considered necessary or expedient, there are two matters for which in my opinion express provision should be made. One is in respect of pending

actions and the other in respect of disputes which have been decided by a valid and subsisting judgement before the validating act is passed. It is a question of policy whether the validating act if passed should be made to include pending actions and/or judgement already given. But it is competent to the appropriate legislature to provide for such inclusion. Even if an act is retrospective or retroactive it may not operate to annual a validating and subsisting judgement as between the parties whose rights and had been duly determined under and according to the law which existed before the new enactment was passed. See the observations at page 404 in 1912 A.C. in the case of John Lemm Vs. Jonas Alexander Mitchel. It is in this connection that the question of filling an appeal against the judgement of the District ~~of the~~ Judge may be expedient even if it is otherwise inadvisable to do so. The judgement does not become final and conclusive if an appeal is filed and it has been held by the Federal Court in Lachhamashwar V Keshwarlal 3 Federal Law Journal page 73 that the Appeal Court is bound to consider any change either in fact or in law which has superceded since the judgement was entered. See the observations of Justice Varadacharriar at pages 91 and 92. See also Shyamukantlal Vs. Rambhajan Suraj 2 Federal Law Journal page 183. I am of opinion that an appeal against the judgement of the District Judge is not advisable unless (1) it is decided in enact a validating measure and (2) it is also decided that such validating measure should include in its ambit the liability of the Nadiad Municipality to pay the surcharge in question notwithstanding the judgement in its favour.

Sd/-

Advocate General.

VGP. 17-7-56.

CONFIDENTIAL.

No. 2 of 1945.

ADVOCATE GENERAL'S CHAMBERS,
High Court,

Bombay 13th January 1945.

U.R. to the Advocate General of Bombay, ----
No. 9-Conf dated the 10th January 1945.

GOVERNOR'S BILL NO. OF 1945

Subject:- A BILL.
..... to validate the Surcharge levied under the authority of Government --- Notifications in the Public Works Department No.6041/36, dated the 11th March 1943, - and No.6041/36 dated the ---- 8th December 1943.

OPINION.

As requested, I offer the following remarks on the Draft Bill for validating surcharges on Electric Bills and charges.

The order dated the 11th March 1943 was amended by the order dated 1st April 1943. I think it is, therefore necessary both in the heading of the bill as well as the body thereof to mention the amending order also. I suggest therefore that the heading should run as follows:-

"A Bill to validate surcharges levied under the authority of Government Notification in the Public Works Department No.6041/36 dated the 11th March 1943 (as amended by Government Notification in the Public Works Department No.6041/36 dated 1st April 1943) and Government Notification in the Public Works Department No.3053/36 dated 8th December 1943."

Similarly in the first recital there should be, inserted the words mentioned in parenthesis above after the mention of the Notification of 11th March 1943, Similarly in the schedule where the Notification of 11th March 1943 is mentioned the words in parenthesis should be

be inserted at the end.

As regards the question whether the validation should be in respect of surcharges levied from and after the 11th March 1943 or from and after the 1st April 1943, I am of opinion, that the Notification as amended authorises surcharges from and after the 1st April 1945. The Bill will be a validating act. It should validate what is done or purported to be done under the Notification in question. I do not think it would be appropriate to provide in the validating bill for the validation of surcharges from the 11th March 1943. I think the validation should be confined to surcharges levied or purported to be levied from and after the 1st April 1943. I do not think there is any case in which a surcharge has been levied by an Electric Company from the 11th March 1943. In the case of the Madras Electricity Co. the surcharges in question were from the month of April. Even if there is a stray case or two in which an Electric Company has purported to levy a surcharge from 11th March 1943, I would rather leave such surcharge uncovered by the proposed bill rather than invite the criticism that the validating act tries to validate something which could not have been done under the Notification in question.

The bill does not in express terms provide that the validation will apply to pending actions. I am of opinion that it is necessary to do so. From the fact that a statute is retrospective it does not necessarily follow that it also covers pending actions. In Craies on Statute Law 4th Edition page 335 we find the following: "And in the absence of anything in an Act to show that it is to have a retrospective operation it cannot be so contrued as to have the effect of altering the law applicable to a claim in litigation at the time when the act is passed." In Eyre Vs. Wywin Mackenzie

1896 1 Chancery page 135 the Court of Appeal held that the Mortgagees' Legal Costs Act 1895 did not affect judgements already given when it was passed though Section 3 was retrospective.

In Maxwell on "Statutes" page 195 we find the following: "In general when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

For the sake of greater caution, I also suggest that the owrds, "purported to be charged" should be added after the words "charged" in the bill.

I find that the recital of the second notification is not correct. The number has been wrongly given. I have corrected it.

The second Notification was dated 8th December 1943 but it was published on 10th December 1943. It would, therefore come into oepration I think on 10th December 1943. I have altered the second column of the schedule in the appropriate manner.

If the above suggestions are accepted, the bill would then be in the form I have set out at the end of this opinion. In the revised draft which I am setting out I have underlined the words which have beenadded or ater in the draft bill.

I am afraid there is some misapprehension as to what I meant in connection with my opinion as to whether the Nadiad Electric Co. should file an appeal against the judgement of the District Judge of Kaira. I would like to make it clear that evenafter the validating act is passed the appeal will have to be oprosecuted. At the hearing of

of the appeal the appellants will be able to rely on the validating act and will invite the Appeal Court todecide the case in the same way in which the Trial Court would or should have decided it if the validating act had existed at the time when the Trial Court gave judgement. Unless the appeal is prosecuted the judgement of the District Court wi stand and the Nadiad Electric Co. will be bound to pay the amount decreed.

I suggest that the Nadiad Electric Co. as appellants in the appeal be advised that they should after the validating act comes into force givenotice to the respondents that they will rely upon it. If necessary they might also ------ obtain an order of the Court giving them leave to amend the ground of appeal by inserting the new ground.

As regards Government being made a party to the ppeal I still continue to be of opinion that any such application, if made, will be refused by the Court. I find that before the suit was heard by the District Court an application was made by the defendants i.e. the Nadiad Electric Co. to the High Court inter alia for Government being made a party to the suit but this application was rejected by the High Court. After the validating act is passed the case for Government being added a party to the appeal is weaker still The notification in question will then have ceased to exist and the question in the appeal can only affect the right of the Nadiad Electric Co, to retain the amount they have already surcharged. I have not got before me the papers relating to the said application and the fact I have mentioned about the application having been made and rejected should be varified. It would also be useful to know the grounds on which the High Court refused the application. If Government however is still desirous of applying to be made a party it would be for the Government Pleader to take the necessary steps in the matter.

It will of course appear and argue the mater but the Government Pleader will have to instruct me and it is for him to prepare the necessary application and file it in Court so that the necessary rule or notice may be issued. I will also settle the application if necessary.

I agree that the bill will have to be reserved for the consideration of the Governor General as required by Section 107(2) of the Government of India Act, 1935.

GOVERNOR'S BILL NO OF 1945.

A Bill to validate surcharges levied or purported to be levied under the authority of Government Notification in the Public Works Department No.6041/36 (as amended by Government Notification in the Public Works Deptt No.6041/36 dated 1st April 1943) and Government Notification in the Public Works Department No.3053/36 dated 8th December 1943.

Whereas the Government of Bombay issued orders under Government Notifications in the Public Works Department No.6041/36 dated the 11th March 1943 (as amended by Government Notification No.6041/36 dated the 1st April 1943) and No.3053/36 dated the 8th December 1943 enabling the levy of a surcharge on the prices charged in respect of the supply of electrical energy in certain cases.

And whereas surcharges were levied or purported to be levied under the authority of the said orders.

And whereas doubts have been raised as to the validity of the levy of surcharges inconsistent any contract or agreement made previous to the said notifications coming into force and then subsisting at the date of such notifications.

And whereasit is expedient that such doubts should be removed and the surcharged levied should be expressly validated.

And whereas the Governor of Bombay has assumed to him

himslef under the proclamation dated the 4th November 1939 issued by him under Section 93 of the Government of India Act, 1935 all the powers vested by or under the said act in the Provincial Legislature.

Now therefore in exercise of the said powers the Governor of Bomba is pleased to make the following Act:-

This Act may be called the Bombay Electricity Surcharge (Validation) Act, 1945.

2) Where any licensee under Section 3o of the Indian Electricity Act 1910 or any person engaged in the business of supplying electrical energy with the previous sanction of the Provincial Government under Section 28 of that Act has acting or purporting to act under the authority of the orders issued in Government Notifications specified in Column 1 of the Schedule and during ethe periods specified against them in column 2 of the Schedule levied or purported to levy a surcharge on the price charged in respect of the supply of electrical energy such surcharge shall be deemed to have been lawfully levied and to have been lawfully payable notwithstanding any stipulating inconsistentherewith or contrary thereto in any contract or agreement made previous to the date of such notification coming into force and the subsisting and the propriety of the levy of such surcharge shall not be called in question in any Court nor shall any claim for refund of any payment made by way of such surcharge be entertained by any Court;

The provisions of this Act shall apply notwithstanding the pendency of any suit or other proceedin; in any Court of Law either in a Court of

of first instance or in a Court of Appeal, at the time whe

when this Act comes into force.

Sd/

Advocate General.

The requisite validating Bill finally settled by the Advocate General and the Statement are sent herewith.

2. The Order dated the 11th March 1943 was amended by the Order dated the 1st April 1943. The Advocate General is of the opinion that the first Order, as amended authorised surcharges from and after 1st April 1943. The Bill will be a validating Act, It should validate what is done or purported to be done under the Order in question. It would not be appropriate to provide in the validating Bill for the validation of surcharges from 11th March 1943. The validation should be confined to surcharges levied or purported to be levied from and after 1st April 1943. It does not appear that there is any case in which a surcharge has been levied by an electric company from the 11th March 1943. In the case of the Nadiad Electricity Co., the surcharges in questio were from the month of April. Even if there is a stray case or two in which an electric company has purported to to levy a surcharge from 11th March 1943, the Advocate General would leave such surcharge uncovered by the proposed Bill rather than invite the criticism that the validating Act tries to validate something which cou could not have been done under the Order in question.

3. The validation is proposed to be done ex majore cautela in relation also to Government Order in Govern ment Notification, Public Works Department No.3053/36 dated the 8th December 1943 which has not yet been spe cifically challenged. Although the order makes express non-obstante provision as regards special contracts both in clauses (a) and (b) thereof yet the expression "it shall be competent" has been used and there may be doubts left as to whether special contracts stand effec tively varied.

4. The subject-matter of the Bill falls under entries 31 and 10 in the Concurrent Legislative List of the Seventh Schedule to the Government of India Act, 1935. As the provisions of the Bill are repugnant to the provisions of the Indian Electricity Act, 1910, and the Indian Contract Act, 1872, which are existing Indian laws with respect to entry 31 and entry 10 in the Concurrent List, it will be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935, and paragraph (2) of the Proclamation. Under executive instructions the Bill requires the previous concurrence of the Governor General.

5. The Advocate General Suggests that the Madiad Electricity Co. as appellants in the appeal be advised that they should after the validating Act comes into force give notice to the respondents that they will rely upon it. If necessary, they might also obtain an order of the Court giving them leave to amend the grounds of appeal by inserting the new ground.

6. As regards Government being made a party to the appeal the Advocate General is definitely of the opinion that any such application, if made, will be refused by the Court. He finds that before the suit was heard by the District Court an application was made by the defendants i.e. the Madiad Electricity Co. to the High Court inter alia for Government being made a party to the suit, but this application was rejected by the High Court. After the validating Act is passed, the case for Government being added a party to the appeal is weaker still; and the question in the appeal can only affect the right of the Madiad Electricity Co. to retain the amount they have already surcharged. The Advocate General desires that the fact about the application having been made an rejected should be verified. It would also be useful to know the grounds on which the High Court refused the application. It does not appear that Government need be made a party to the appeal.

Id/- P.N.M.
16/1/45.
Remembrancer of Legal Affairs.

U.R. to R.W.D. No.21-Confl, dated the 17th January 1945.

smc/30-8

Confidential
IMMEDIATE.

No. 183-Confl.

Legal Department.
Bombay Castle 14th April 1945.

From

P.H.Moos, Esquire, Bar-at-law, I.C.S,
Secretary to the Government of Bombay;

To

The Secretary to the Governor of Bombay,

Subject: The Bombay Electricity Surcharge (Validation) Bill, 1945.

Sir,

With reference to your Memorandum No.S.26(5), dated the 26th March 1945 addressed to the Public Works Deptt on the above subject I am directed to forward herewith a copy of the Bombay Electricity Surcharge (Validation) Bill,1945 prepared by His Excellancy the Governor of Bombay under paragraph (2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government of India Act, 1935 and to request you to forward the same to the Secretary to the Governor General(Public) for obtaining the assent of His Excellancy the Governor General.

2. The subject matter of the Bill falls under entries 31 and 10 in the Consurrent Legislative List of the Seven Schedule to the Government of India Act, 1935. As the provisions of the Bill are repugnant to the provisions of the Indian Electricity Act, 1910 and the Indian Contract Act, 1872 which are existing Indian laws with respect to entry 31 and entry 10 in the Concurrent Legislative List, it will be necessary to reserve the Bill for the consideration of the Governor General with reference to section

107(2) of the Government of India Act, 1935, and paragr
(2) of the Proclamation.

3. I also forward herewith six spare copies of the Bill, out of which five copies are for transmission to the Secretary to the Governor General (Public).

I have the honour to be,

Sir,

Your most obedient servant.

Id/-

P.N.M. 14/4/45.

Secretary to the Government of Bombay,
Legal Department.

THROUGH:

The Secretary to the Government of Bombay,

Public Works Department.

VGP. 17-7-56.

No.201 (120)
Office of the Governor's Secretary
Government House,

From

D. Symington, Esquire, CIE ICS.
Secretary to the Governor of Bombay

To

The Secretary to Government,
Legal Department, Bombay.
Bombay 4th May 1945.

Subject: The Bombay Electricity Surcharge (Validation) Bill 1945.

Sir,

With reference to your letter No.183-Confl., dated 14th April 1945, on the above subject, I am directed to forward herewith the authenticated copy of the Bombay Electricity Surcharge (Validation) Bill 1945, with His Excellency the Governor - General's assent signified thereon.

Your obedient servant,

for Secretary to the Governor of Bombay.

VGP. 17-7-56.

Acts.

Publication of the Bombay Electricity Surcharge (Validation) Act, 1945.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No 3696
Bombay Castle 12th May 1945.

Letter to the Secretary to the Governor No.183-Confl dated the 14th April 1945.

Letter from the Secretary to the Governor, No 201(120) dated the 4th May 1945.

"With reference to your letter No.183-Confl., dated 14th April 1945, on the above subject, I am directed to forward herewith the authentic copy of the Bombay Electricity Surcharge (Validation) Bill, 1945 with His Excellancy the Governor-General's assent signified thereon."

RESOLUTION.- The law should be published as Bombay Act No. XIII of 1945 in the Bombay Government Gazette dated the 12th May 1945.

2. The Act should be translated into Marathi, Gujarati Kannada and Hindustani (Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Public Works Department.

By order of the Governor of Bombay.

Sd/ K.M.C.

F.N.Epps.
For (Secretary to Government).

To

The Manager, Government Central Press
Bombay (with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department);

The Public Works Department;

*The Oriental Translator to Government;

The Secretary to the Bombay Legislative Council;

The Secretary to the Bombay Legislative Assembly.

*With five extra copies.